

WALPOLE PLANNING BOARD MINUTES OF NOVEMBER 5, 2015

A regular meeting of the Walpole Planning Board was held on Thursday, November 5, 2015 at 7:00 p.m. in the Main Meeting Room in Town Hall. The following members were present: John Conroy, Chairman; Richard Nottebart, Vice Chairman; John Murtagh, Clerk (7:03 p.m.); Elizabeth Gaffey, Richard Mazzocca (7:04 p.m.); Elizabeth Dennehy, Community Development Director; Margaret Walker, Town Engineer.

Mr. Conroy opened the meeting at 7:02 p.m.

Minutes: Mr. Nottebart moved to accept the minutes of October 1, 2015 and October 15, 2015. Motion seconded by Mr. Conroy and voted 3-0-0.

Mr. Murtagh arrived at 7:03 p.m. Mr. Mazzocca arrived at 7:04 p.m.

Olmsted Estates Bond Set: Mr. Conroy moved to set the bond for Olmsted Estates at \$1,525,000.00 as per recommendation of Margaret Walker, Town Engineer. Motion seconded by Mr. Nottebart and voted 5-0-0.

Tall Pines Subdivision Bond Reduction: Mr. Conroy moved to reduce the bond being held for Tall Pines by \$19,844.00. Motion seconded by Mr. Nottebart and voted 5-0-0. Said bond is a Tripartite Agreement.

7:25 p.m. Dynamic Energy Solutions (Bird Landfill) Continued Hearing, Case No. 15-10: The applicant was represented by Andy Backinowski, Weston & Sampson. He stated Ms. Walker had four issues and they addressed three of them: 1) traffic; 2) post/pre development run-off; and 3) access. Regarding Ms. Walker's fourth issue, the surveyor would like to board to close the hearing and condition the decision as this is hand in hand with the Conservation Commission's technical issues. Another issue is the bond and/or letter of credit. The lending company wants to know this will be going forward before they issue something. Ms. Walker stated that as long as the plans are stamped before the board signs them, she is okay with this. Mr. Backinowski stated there will be trees removed and the Conservation Commission would like some low ground cover. They will be stabilizing with grass also. Ms. Walker stated there needs to be more detail on the plans. Ms. Dennehy stated one of her concerns is with the letter of credit. Mr. Backinowski stated they came up with \$400,000 for the total area and total kW. Ms. Dennehy asked if they would be content with that \$400,000 figure if the board closed the hearing and Mr. Backinowski stated yes. Mr. Conroy questioned the type of bond and Ms. Dennehy stated it would be a performance bond or a letter of credit. She thought the amount is excessive, so the board should be comfortable with it. Mr. Conroy asked when they will be going back to ConCom and Mr. Backinowski stated they met with them last Wednesday and will again next Thursday. Mr. Murtagh feels \$400,000 is excessive. Mr. Nottebart stated he would prefer to have the board wait until the Conservation Commission closes but will do what the board wants. Ms. Gaffey stated she is okay with closing as long as the board is covered. Mr. Mazzocca thought we had a formula and Ms. Dennehy stated it is the bylaw and it is on the applicant to provide us with an estimate. If the estimate is reasonable, that is what we should go with. The other ones seemed a lot less, but more surety is better for us. Mr. Backinowski stated a third party came up with that \$400,000 figure.

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There were no public comments.

Mr. Conroy asked Mr. Backinowski if he understands what happens if the Conservation Commission makes any changes and he stated yes. He stated they are updating the interconnection agreement and the DEP comments.

Mr. Conroy made a motion to close the hearing as requested by Mr. Backinowski. Motion seconded by Mr. Murtagh and voted 5-0-0. The board discussed the special conditions. Ms. Dennehy stated that two of the special conditions would be the plans will be stamped and Ms. Walker will review the retention basin.

Mr. Conroy moved to approve the site plan for Dynamic Energy Solutions, Case No. 15-10 with thirty-one (31) standard conditions and twelve (12) special conditions. Motion seconded by Mr. Murtagh and voted 5-0-0.

7:46 p.m. 54 Peach Street 2-Lot Subdivision Continued Hearing: Mr. Conroy stated he was not at the last hearing and therefore will not be voting on this application. The applicant, Richard Adams, was represented by Atty. James Brady, Main Street, Walpole and also present was John Glossa, Glossa Engineering, East Street, East Walpole. Ms. Walker stated she just saw this revised plan today. Atty. Brady stated they met with the Historical Commission on September 28 and it was determined this property was not historically or architecturally significant and they would not object to the Building Inspector issuing a demolition permit, which has already been applied for.

Mr. Glossa submitted revised plans to the board. He stated there was miscommunication between himself and the Fire Department. The Fire Department thought there were multiple houses, but after meeting with Deputy Laracy, he re-sent a letter. The Fire Department agreed to a Peach Street address. Also, this lot meets zoning and the board's rules and regulations. He stated they will be removing the Morrissey Way sign and replacing it with a "Private Way" sign. There are plenty of street numbers to assign this house a Peach Street address. The utilities will be services, but no manholes. Mr. Glossa stated the developer will retain the fee in the street and the owner of Lot 2 will be responsible for the maintenance of the driveway. He stated his own driveway is 1,000' long and only 11' wide and he has no catch basins. They will be tapping into the sewer line that is out in the street and will bring up a 1" copper line to service the new house per policy of the Sewer and Water Department. They will be excavating out in the street and the town engineer requires a curb to curb overlay. Site distance to the left is at least 350' and the other way all the way to Route 27, which is more than 500'. They added some light posts and will have a street monument. They will have a hammerhead as recommend by both the fire and police. Regarding the plans he submitted to the board tonight, he is aware that he doesn't meet the two-week rule, but the town engineer does have them now. At the last meeting there was talk about the number of waivers and this is not unprecedented. Mr. Conroy questioned Parcel A. Atty. Brady stated there is a strip of land that goes around the entire edge of both lot lines. This will protect the client and the town from further development. It will be maintained by the developer.

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Mr. Conroy stated this is similar to Irving Drive. There was a strip there and it became junk so now we make someone have it. Atty. Brady stated the owner of Lot 2 owns it and will maintain it. Mr. Conroy asked if it could be merged with Parcel A and Atty. Brady stated yes. Mr. Conroy asked if Lot 1 will get its frontage from Morrissey Way or Peach Street and Atty. Brady stated both lots comprise the subdivision. Mr. Conroy stated they have to have frontage on Morrissey. You can't have a one lot plan and an ANR. This is like Sardella Circle. The frontage looks like it is on Washington Street, but it is on Sardella Circle. Also, the setback has to be 30'. Mr. Glossa stated it is. Also, the front house is being demolished. Mr. Conroy asked that "to be demolished" be put on the plan. Also, that Parcel A will end up with Lot 2. Atty. Brady disagreed and stated if Parcel A is merged into Lot 2, there is no protection. Mr. Conroy stated it will be a private road in perpetuity and it can't be developed. Atty. Brady stated he wants to think about that. Ms. Gaffey stated that the second house is getting a Peach Street address, so there is no Morrissey lane? Atty. Brady stated that is correct. Ms. Gaffey stated so it becomes a driveway so you have satisfied the Fire Department with how they will access it? Atty. Brady stated yes. Ms. Gaffey asked could Parcel A if it is kept separate be sold in the future or could it become a street or another driveway and Atty. Brady stated he wants to think about that before answering. Mr. Mazzocca questioned Lot 2 in the back. Atty. Brady stated the maintenance of the driveway will be imposed upon Lot 2 by deed. Mr. Mazzocca asked how we can guarantee the house will be knocked down. Atty. Brady stated that the chairman has asked that a note be put on the plan showing "house to be demolished", which will address that. Mr. Mazzocca stated it will look like two houses on one lot and Atty. Brady stated that is correct. They could build the road and cul-de-sac that would comply with subdivision control, but it doesn't make a lot of sense to do that. Mr. Mazzocca asked the width of Cove Road and Mr. Glossa stated 16', but there are two houses on it. Mr. Mazzocca feels they are just by passing the subdivision requirements. Mr. Glossa stated there are still some gravel roads in Walpole and this won't look like gravel. It will be dressed up and look very nice. It will allow for that road to be 18' without looking like that and it will allow the stormwater to infiltrate into the ground. Ms. Walker stated she needs the type of Homeowners' Association, conveyance of easements and Mutual Maintenance Agreement. Atty. Brady stated that is not necessary because there will be two separate services for each entity. Also, Lot 1 will have a deed restriction. Ms. Walker stated as long as all the conditions are in the deed that are in the Mutual Maintenance Agreement, then it will be okay. Atty. Brady stated it could be conditioned that way. Ms. Walker stated it needs to be somewhere so it will be recorded.

Ms. Dennehy stated she spoke with the deputy fire chief and he expressed what was in his memo and he is more than comfortable with a 12' driveway and 3' of gravel on each side. He also wants it conditioned that the shoulders will be maintained in inclement weather. Mr. Murtagh questioned if this meets the subdivision and zoning regulations. Mr. Glossa stated each lot has the required area and zoning. Also, the roadway as proposed doesn't have the 30' layout on the northerly side. Mr. Murtagh agrees with Mr. Conroy and Ms. Gaffey regarding Parcel A. Mr. Glossa stated that the trenches are large enough to handle run-off. Mr. Murtagh stated if the neighbors are on board, it seems like this would be lesser than a full subdivision. Mr. Glossa stated the neighbors like this better. Peach Street is only an 18' road. Mr. Murtagh questioned the scenic road and wants to make sure there is no removal of stone walls.

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Mr. Conroy referenced a letter dated November 4, 2015 from John O'Leary, Washington Street, stating he doesn't believe we can exclude Lot 1 from the Mutual Maintenance Agreement. You can say that Lot 2 will do it all, but you have to mention Lot 1. Atty. Brady stated he will check on that. Mr. Conroy stated this is a subdivision and the name is Morrissey Lane, but you don't need to use it or have a sign; however, when you go to record the plan, you will need it. It's a private paper street. Atty. Brady questioned Peach Street Ext. and Ms. Walker stated the fire and police won't allow that. Mr. Conroy stated we need a street name on the plan and that will be a condition of approval.

Robert O'Leary, Washington Street stated he is about 850' from the rear of the subdivision. He stated if Parcel A is separate, he doesn't think it will be legal as it won't meet MGL, Section 81M. Mr. Conroy stated that is why we asked them to combine it with Lot 2. As long as the borders touch, it is considered merged. Mr. O'Leary stated he doesn't think the Planning Board could block access to a parcel that may be buildable. Mr. Conroy stated whoever owns Parcel A can open it up. Mr. O'Leary's question is can they block it legally. Mr. O'Leary stated the board doesn't know the status of the abutting lots. He stated the board will be cutting someone off. Mr. Conroy stated this will always remain private. Who is being cut off and what parcel of land is not accessible to the town. We are not blocking off any access. Mr. O'Leary stated he is talking about Mr. Wild's land. Mr. Conroy stated he has a couple of parcels. No one will be landlocked as there is another means of access. Mr. O'Leary stated it is not landlocked to the street, but he is not sure if there is access to develop anything. Mr. Conroy stated we are dealing with what is before us. Mr. O'Leary asked how this would meet 81M. If it is a private road you can block access. Mr. Conroy stated we have not blocked anyone off. There is not one piece of property than cannot be accessed. We are not here to help someone maximize anything. This will be conditioned that this can't be opened up and it will remain private. MGL is very clear. Mr. O'Leary stated he is still confused. Mr. Conroy stated if this never happened, who is being cut off? Mr. O'Leary asked if a private road can or cannot cut off access and Mr. Conroy stated they are proposing this to be private and it will remain private in perpetuity.

John Lee, 509 Old Post Road, Sharon stated he drives this road every day on his way to work. He questioned that Morrissey Lane will be created with a 1' strip. Mr. Conroy stated they will have to make this merge into Lot 2. If held in common ownership, it is considered merged. Mr. Lee stated this will be a private road in perpetuity and can other lots be added onto this private road. Mr. Conroy stated that based on the way the lot is configured, you would have a substandard road, and there will be a condition that this will remain private in perpetuity. Mr. Lee stated you could end up having side by side lots to access additional property. He feels that the 1' strip is not good zoning or good planning. Mr. Conroy stated that according to our rules and regulations, you have to be 150' away so you can't have roads side by side. Mr. Lee asked wouldn't it be better to have a cul-de-sac coming off that road rather than roads every 150'. That 1' road is blocking the neighbors' access to the back parcels. Mr. Lee stated every house on that section of Peach Street layout should have the cul-de-sac and not allow the 1' buffer as that holds up other development in the area. It would force other people to put in their own roadway.

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Mr. Conroy stated they still have to be 150' apart. Mr. Lee stated so even if someone wanted to develop there, the Planning Board is saying you can't connect to Morrissey? Mr. Conroy asked whose property Mr. Lee is concerned about and Mr. Lee stated he feels this would be detrimental to the neighborhood. Mr. Conroy stated nothing is being blocked. Mr. Lee doesn't see this as good planning for the town. Mr. Conroy stated he just made the Wild property more valuable. Mr. Lee stated he has no other interest than the fact that he drives this road. Mr. Conroy stated that right now Mr. Wild has access to his land. Mr. O'Leary feels this will create more congestion. Atty. Brady stated his client can comply with subdivision control. That is a big difference. The reason for the 1' strip is for just the reasons that they stated.

There were no further comments. Mr. Conroy continued this to November 19, 2015 at 7:46 p.m.

John O'Leary, Washington Street asked if Mr. Wild didn't have 150', could he not develop his property. Mr. Conroy stated he has access which is what he needs. Mr. O'Leary stated he would need to put in a driveway. Mr. Conroy stated he would need to meet the subdivision rules and regulations. Mr. O'Leary stated if you allow Parcel A, everyone will have a Parcel A and you are setting a precedent. Mr. Conroy stated this board doesn't set precedents, only a judge does.

Mr. O'Leary continued this to November 19, 2015 at 7:46 p.m.

9:09 p.m. KAM Construction Continued Hearing, Eastover Road, Case No. 15-9: Mr. Conroy read a letter dated October 29, 2015 from Atty. Paul Schneiders, Canton, MA requesting to withdraw this application. Mr. Nottebart stated he is not sure this should be done by a Limited Site Plan. Mr. Murtagh asked if we should get an opinion from town counsel. Mr. Conroy stated we need to withdraw this as that is what is being requested. Mr. Nottebart stated we were asked to look at the site. If this just slides through, we are letting down the neighbors. The Building Department has found some loop holes. Ms. Dennehy stated we should discuss this and try and change it at the Spring Town Meeting. There is a glitch in the bylaw. They have to go through a public hearing process with the Zoning Board for a Special Permit for multiple units on one lot. Mr. Conroy stated he thinks they need two special permits and a full site plan review. Mr. Nottebart stated it appears the building department will be doing this now. There is something here he doesn't like. Mr. Mazzocca agrees. Every project like this comes before us. Mr. Nottebart stated he has nothing from the Building Department. He is not happy. Ms. Dennehy stated he didn't send us any correspondence. Mr. Conroy stated they have asked to withdraw and we have to vote. We can ask town counsel for her opinion. He is asking to withdraw and didn't mention without prejudice.

Mr. Conroy moved to allow the applicant to withdraw his application for Eastover Road. Motion seconded by Mr. Mazzocca. Ms. Gaffey stated it is not our place to ask why. Mr. Murtagh stated we need to look at this for the Spring town meeting. Ms. Dennehy agreed that we need to fix the language. Motion voted 4-1-0 (Mr. Nottebart voting in the negative). It was agreed to ask town counsel for an interpretation.

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9:19 p.m. Roscommon OSRD New Hearing: Mr. Conroy read a letter from the applicant's attorney, Johanna Schneider, Rackemann, Sawyer & Brewster, Boston, MA dated November 5, 2015 asking to continue this hearing to November 19th; however, he doesn't think we have enough room on that agenda. He stated we also have email from our own town counsel dated today asking to continue this hearing. The applicant didn't want to go forward because our attorney can't be here tonight.

Mr. Conroy moved to continue this hearing to December 3, 2015 at 7:32 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

It was moved, seconded and voted 5-0-0 to adjourn. The meeting adjourned at 9:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted on 11/19/15